IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 729 OF 2003
FROM DISTRICT : PUNE

Shri Ramkrishna Govind Rane .. Petitioner
(Orig.Plaintiff no.2)

Vs.

Mrs.Shalini Ramkrishna Rane
and Ors. .. Respondent
(Orig.Plaintiff no.1)

Mr.A.V.Anturkar for the petitioner

Mr.S.J.Rairkar for respondent no.1

Ms.Angeline Rodrigues i/b Mr.Mohan Pungliya for respondent no.1A to 1D

CORAM : J.N.PATEL J.

DATED : 25TH JULY, 2006

P.C.:

1. Heard. The petitioner who is the original plaintiff no.2 has impugned the order dt.1.9.02 passed by the Trial Court in which the petitioner sought that his wife who is the original plaintiff no.1 be transposed as party defendant for the reason stated in the application which came to be rejected by the Trial Court.

2. On going through the order, this court finds that the Trial Court has not committed any error of Jurisdiction nor it can be said that the findings are perverse as the co-plaintiff cannot seek as of right to transpose another plaintiff as party defendant.

3. It may be that the parties may have conflict of interest. In that event, at the time of leading evidence the aggrieved plaintiff has a right to make a prayer to the Trial Court to reserve his or her right to cross-examine after the evidence if any, is led by the party concerned.

4. Mr.Anturkar, the learned counsel for the petitioner submits that the Trial Court has made certain observations against his interest and therefore, the Trial Court has expressed his mind on the merits of the matter due to which the petitioner is aggrieved. It is made clear that whatever observation has been made by the trial court is for the purpose of dealing with the application and it cannot be read as a decision

taken on merits as it is prima facie in nature.

5. By way of caution, this court makes it clear that the trial court would not be influenced by any of the observations made in the order while deciding the application which effects the right of the parties in any manner. The trial court will decide the suit after recording evidence of the parties on its own merits. With these observations, the petition is dismissed. Needless to state that as the petition is dismissed, all interim orders do not survive.

(SHRI J.N. PATEL, J)